

1 GIBSON, DUNN & CRUTCHER LLP
Theodore B. Olson, SBN 38137
2 *tolson@gibsondunn.com*
Matthew D. McGill, *pro hac vice*
3 Amir C. Tayrani, SBN 229609
1050 Connecticut Avenue, N.W., Washington, D.C. 20036
4 Telephone: (202) 955-8668, Facsimile: (202) 467-0539

5 Theodore J. Boutrous, Jr., SBN 132009
tboutrous@gibsondunn.com
6 Christopher D. Dusseault, SBN 177557
Ethan D. Dettmer, SBN 196046
7 Sarah E. Piepmeier, SBN 227094
Theane Evangelis Kapur, SBN 243570
8 Enrique A. Monagas, SBN 239087
333 S. Grand Avenue, Los Angeles, California 90071
9 Telephone: (213) 229-7804, Facsimile: (213) 229-7520

10 BOIES, SCHILLER & FLEXNER LLP
David Boies, *pro hac vice*
11 *dboies@bsflp.com*
333 Main Street, Armonk, New York 10504
12 Telephone: (914) 749-8200, Facsimile: (914) 749-8300

13 Jeremy M. Goldman, SBN 218888
jgoldman@bsflp.com
14 Theodore H. Uno, SBN 248603
1999 Harrison Street, Suite 900, Oakland, California 94612
15 Telephone: (510) 874-1000, Facsimile: (510) 874-1460

16 Attorneys for Plaintiffs
KRISTIN M. PERRY, SANDRA B. STIER,
17 PAUL T. KATAMI, and JEFFREY J. ZARRILLO

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 KRISTIN M. PERRY, *et al.*,
21 Plaintiffs,
and
22 CITY AND COUNTY OF SAN FRANCISCO,
23 Plaintiff-Intervenor,
v.
24 ARNOLD SCHWARZENEGGER, *et al.*,
25 Defendants,
and
26 PROPOSITION 8 OFFICIAL PROPONENTS
27 DENNIS HOLLINGSWORTH, *et al.*,
28 Defendant-Intervenors.

CASE NO. 09-CV-2292 VRW
**PLAINTIFFS' STATEMENT
CONCERNING PROPONENTS'
MOTIONS TO COMPEL**
Trial Date: January 11, 2010
Judge: Chief Judge Walker
Magistrate Judge Joseph C. Spero
Location: Courtroom 6, 17th Floor

1 Pursuant to this Court’s January 26, 2010 order, Doc #526, Plaintiffs respectfully submit this
 2 statement concerning the various motions to compel filed by Proponents’ seeking to enforce
 3 non-party subpoenas. Plaintiffs take no position regarding the specific issues presented by these
 4 motions, but note that, aside from one internet advertisement (DIX2308) and three press releases
 5 (DIX2472, DIX2500, DIX2502), Proponents did not seek to introduce into evidence publicly
 6 disseminated campaign messages urging voters to vote “no” on Proposition 8, despite ample
 7 opportunity to do so and, apparently, the production of significant quantities of documents relating to
 8 these issues by non-parties. See Doc #503 (Proponents’ Third Supplemental Exhibit List, which
 9 identified over 300 documents produced by various third parties, including the ACLU, Californians
 10 Against Eliminating Basic Rights, and Equality California).

11 Accordingly, the Proponents’ argument that this non-party discovery is somehow necessary to
 12 allow them to put before the Court the full “mix” of information does not withstand scrutiny.
 13 Doc #472 at 3-4. Proponents made a tactical decision not to make a record on that issue during trial,
 14 and this factor weighs against compelling further discovery from the non-parties.

15 Respectfully submitted,

16 DATED: February 2, 2010

GIBSON, DUNN & CRUTCHER LLP
 Theodore B. Olson
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21 By: _____/s/
 22 Theodore J. Boutrous, Jr.

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and

BOIES, SCHILLER & FLEXNER LLP
David Boies
Jeremy M. Goldman
Roseanne C. Baxter
Richard J. Bettan
Beko O. Richardson
Theodore H. Uno
Joshua I. Schiller

Attorneys for Plaintiffs
KRISTIN M. PERRY, SANDRA B. STIER,
PAUL T. KATAMI, and JEFFREY J. ZARRILLO